

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

MOTOROLA MOBILITY LLC, and
GENERAL INSTRUMENT CORPORATION,

Plaintiffs/Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant/Counterclaim Plaintiff.

CASE NO. C10-1823-JLR

DEFENDANTS' NONOPPOSITION TO
MICROSOFT'S 10/4/12 MOTION TO
FILE DOCUMENTS UNDER SEAL

**NOTED ON MOTION CALENDAR:
Friday, October 12, 2012**

DEFENDANTS' NONOPPOSITION TO MICROSOFT'S
10/4/12 MOTION TO FILE DOCUMENTS UNDER SEAL
CASE NO. C10-1823-JLR

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I. INTRODUCTION

Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, LLC, and General Instrument Corporation (collectively “Motorola”) do not oppose Microsoft’s 10/4/12 Motion to File Documents Under Seal (Dkt. No. 448) regarding the following documents:

- Exhibits 1-12 and 14-16 to the Declaration of Christopher Wion in Support of Microsoft’s Motions *In Limine* (“10/4/12 Wion Declaration”) (Dkt. Nos. 451 and 452);
- Microsoft’s Motions *In Limine* (Dkt. No. 450); and
- Microsoft’s Proposed Findings of Fact and Conclusions of Law (Dkt. No. 454).

II. MOTOROLA DOES NOT OPPOSE MICROSOFT’S MOTION TO SEAL

A. Exhibits 1-12 and 14-16 to the 10/4/12 Wion Declaration

Exhibit 1 to the 10/4/12 Wion Declaration is a copy of the transcript from the deposition of Kirk W. Dailey, taken under oath July 12, 2012, in Chicago, Illinois. This deposition has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Throughout his testimony, Mr. Dailey disclosed highly confidential information about Motorola’s licenses, licensing history and internal business practices. Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Due to the presence of this highly confidential information throughout the transcript, there is good cause to seal Exhibit 1, which should be sealed in its entirety.

Exhibit 2 to the 10/4/12 Wion Declaration is a copy of the transcript of the deposition of Motorola witness Timothy M. Kowalski, taken under oath in Chicago, Illinois, on April 4, 2012. During his deposition, Mr. Kowalski, then lead intellectual property counsel at Motorola (and now Senior Patent Counsel at Google), testified extensively as to Motorola’s confidential licensing arrangements with third parties and as to numerous documents that Motorola has designated as “confidential.” Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Although

1 Motorola initially did not designate this transcript as confidential, Motorola has asked the court
2 reporter to do so, and now considers the transcript to be designated “HIGHLY CONFIDENTIAL
3 – ATTORNEYS’ EYES ONLY.” Due to the presence of highly confidential information
4 throughout the transcript, there is good cause to seal Exhibit 2, which should be sealed in its
5 entirety.

6 Exhibit 3 to the 10/4/12 Wion Declaration is a copy of the July 24, 2012 Expert Report of
7 Motorola expert Richard Schmalensee. This report, which is designated “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” contains highly confidential information
9 about Microsoft and Motorola business and licensing practices and history. Disclosure of this
10 information to third parties and other party employees not covered by the protective order would
11 have the potential to lead to competitive harm. Accordingly, there is good cause to seal Exhibit 3,
12 which should be sealed in its entirety. This document was previously submitted to the Court as
13 Exhibit 35 to the September 5, 2012 Second Declaration of Samuel L. Brenner In Support of
14 Motorola Mobility’s and General Instrument’s Opposition to Microsoft’s Rule 702 Motion to
15 Preclude Testimony By Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 392), and was ordered
16 sealed by the Court (Dkt. No. 432).

17 Exhibit 4 to the 10/4/12 Wion Declaration is a copy of the August 10, 2012 Rebuttal
18 Expert Report of Charles R. Donohoe. This report, which is designated as “CONTAINS
19 CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’ EYES ONLY –
20 SUBJECT TO PROTECTIVE ORDER,” includes an examination of, and discloses, confidential
21 and non-public financial and business information relating to both Microsoft and Motorola, and
22 relating to licensing and business practices and history. Disclosure of this information to third
23 parties and other party employees not covered by the protective order would have the potential to
24 lead to competitive harm. Accordingly, there is good cause to seal Exhibit 4, which should be
25 sealed in its entirety. This document was previously submitted to the Court as Exhibit 50 to the
26 September 5, 2012 Second Declaration of Samuel L. Brenner In Support of Motorola Mobility’s

1 and General Instrument's Opposition to Microsoft's Rule 702 Motion to Preclude Testimony By
 2 Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 392), and was ordered sealed by the Court
 3 (Dkt. No. 432).

4 Exhibit 5 to the 10/4/12 Wion Declaration is a copy of the August 10, 2012 Rebuttal
 5 Expert Report of Roger S. Smith, which has been marked "HIGHLY CONFIDENTIAL –
 6 ATTORNEYS' EYES ONLY." This report includes an examination of, and discloses,
 7 confidential and non-public financial and business information relating to both Microsoft and
 8 Motorola, and relating to licensing and business practices and history. Disclosure of this
 9 information to third parties and other party employees not covered by the protective order would
 10 have the potential to lead to competitive harm. Accordingly, there is good cause to seal Exhibit 5,
 11 which should be sealed in its entirety. This document was previously submitted to the Court as
 12 Exhibit 63 to the September 5, 2012 Second Declaration of Samuel L. Brenner In Support of
 13 Motorola Mobility's and General Instrument's Opposition to Microsoft's Rule 702 Motion to
 14 Preclude Testimony By Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 392) and Exhibit 11 to
 15 the Declaration of Christopher Wion in Support of Microsoft's Opposition to Motorola's *Daubert*
 16 Motion to Exclude Certain Testimony of Plaintiff's Experts Drs. Lynde, Murphy, and Simcoe
 17 (Dkt. No. 407), and was ordered sealed by the Court (Dkt. Nos. 432 and 433).

18 Exhibit 6 to the 10/4/12 Wion Declaration is a copy of the transcript of the deposition of
 19 Motorola expert Michael Dansky, taken under oath in New York on September 5, 2012.
 20 Microsoft has informed Motorola that it intends to designate the transcript as "confidential" under
 21 the terms of the Protective Order. During his deposition, Mr. Dansky testified extensively
 22 regarding the contents of both his opening and rebuttal expert reports, which Microsoft has
 23 designated in their entirety as "Highly Confidential – Attorneys' Eyes Only," and also testified
 24 regarding the opinions of Motorola expert Charles R. Donohoe, which were themselves contained
 25 in reports that Motorola has designated as "CONTAINS CONFIDENTIAL FINANCIAL
 26 INFORMATION – OUTSIDE ATTORNEYS' EYES ONLY -- SUBJECT TO PROTECTIVE

1 ORDER.” Moreover, during his deposition, Mr. Dansky discussed confidential information about
2 Microsoft’s and Motorola’s business and licensing practices and licensing history. Disclosure of
3 this information to third parties and other party employees not covered by the protective order
4 would have the potential to lead to competitive harm. Due to presence of this highly confidential
5 information throughout the transcript, there is good cause to seal Exhibit 6, which should be sealed
6 in its entirety. This exhibit was previously submitted as Exhibit 6 to the Second Declaration of
7 Christopher Wion in Support of Microsoft’s Rule 702 Motion to Preclude Testimony by Charles
8 R. Donohue and Dr. Ramamirtham Sukumar (the “9/10/12 Wion Declaration”) (Dkt. No. 423),
9 and was ordered sealed by the Court on September 21, 2012 (Dkt. No. 444).

10 Exhibit 7 to the 10/4/12 Wion Declaration is a copy of a Patent Portfolio License between
11 Google, Inc. and MPEG LA, L.L.C., signed in January of 2005. This document is a highly
12 confidential agreement between two non-parties to this litigation, and has been designated as
13 “GOOGLE'S CONFIDENTIAL FINANCIAL INFORMATION - OUTSIDE ATTORNEYS'
14 EYES ONLY - SUBJECT TO PROTECTIVE ORDER.” The Agreement itself indicates that in
15 no event shall the licensing administrator provide to any of the licensors information on royalties
16 paid on a licensee-by-licensee basis, unless required by law, court order, or rule or regulation. *See*
17 § 3.11.7. Disclosure of the specific terms of this license to third parties not covered by the
18 protective order would have the potential to lead to competitive harm. Due to presence of highly
19 confidential information throughout the license, there is good cause to seal Exhibit 7, which
20 should be sealed in its entirety.

21 Exhibit 8 to the 10/4/12 Wion Declaration is a copy of the transcript of the deposition of
22 Motorola employee Allen Lo, taken under oath July 12, 2012 in Redwood Shores, California.
23 This transcript has been designated as “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
24 ONLY PURSUANT TO PROTECTIVE ORDER.” Throughout his testimony, Mr. Lo, Deputy
25 General Counsel for Patents and Patent Litigation at Google, disclosed highly confidential
26 information about Google’s and Motorola’s licensing history and practices and internal business

1 practices. Disclosure of this information to third parties and other party employees not covered by
2 the protective order would have the potential to lead to competitive harm. Due to the presence of
3 this highly confidential information throughout the transcript, there is good cause to seal Exhibit 8,
4 which should be sealed in its entirety.

5 Exhibit 9 to the 10/4/12 Wion Declaration is a copy of the July 24, 2012 Expert Report of
6 Motorola expert Charles R. Donohoe, along with Exhibit C to that report. As Microsoft has
7 previously pointed out (Dkt. No. 394 at 4), this report, which is designated as “CONTAINS
8 CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’ EYES ONLY –
9 SUBJECT TO PROTECTIVE ORDER,” includes an examination of, and discloses, confidential
10 and non-public financial and business information relating to both Microsoft and Motorola, and
11 relating to licensing and business practices and history. Disclosure of this information to third
12 parties and other party employees not covered by the protective order would have the potential to
13 lead to competitive harm. Accordingly, there is good cause to seal Exhibit 9, which should be
14 sealed in its entirety. This document was previously submitted as Exhibit 2 to the August 27,
15 2012 Declaration of Christopher Wion in Support of Microsoft’s Rule 702 Motion to Preclude
16 Testimony by Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 398), and was ordered sealed by
17 the Court on September 10, 2012 (Dkt. No. 419).

18 Exhibit 10 to the 10/4/12 Wion Declaration is a copy of the transcript from the August 24,
19 2012 deposition of Motorola expert Charles R. Donohoe, which has been designated as “Highly
20 Confidential- Pursuant to Protective Order.” At his deposition, Mr. Donohoe testified extensively
21 regarding the content of both his opening and rebuttal expert reports, both of which were
22 designated as “CONTAINS CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE
23 ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER,” and both which include
24 examinations and disclosure of confidential and non-public financial and business information
25 relating to both Microsoft and Motorola, and relating to licensing and business practices and
26 history. Disclosure of this information to third parties and other party employees not covered by

1 the protective order would have the potential to lead to competitive harm. Accordingly, there is
2 good cause to seal Exhibit 10, which should be sealed in its entirety. This document was
3 previously submitted as Exhibit 3 to the August 27, 2012 Declaration of Christopher Wion in
4 Support of Microsoft's Rule 702 Motion to Preclude Testimony by Charles R. Donohoe and Dr.
5 R. Sukumar (Dkt. No. 398), and was ordered sealed by the Court on September 10, 2012 (Dkt.
6 No. 419).

7 Exhibit 11 to the 10/4/12 Wion Declaration is a copy of the transcript from the August 22,
8 2012 deposition of Motorola expert Dr. Richard Schmalensee, which was taken under oath in
9 Boston, Massachusetts. At his deposition, Dr. Schmalensee testified extensively regarding the
10 content of both his opening and rebuttal expert reports, which were both designated as "HIGHLY
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY," and which both contain highly confidential
12 information about Microsoft and Motorola business and licensing practices and history. Dr.
13 Schmalensee was also examined extensively regarding the substance of the opening report
14 submitted by Motorola licensing expert Charles R. Donohoe, which report was designated as
15 "CONTAINS CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS'
16 EYES ONLY – SUBJECT TO PROTECTIVE ORDER," includes an examination of, and
17 discloses, confidential and non-public financial and business information relating to both
18 Microsoft and Motorola, and relating to licensing and business practices and history. Dr.
19 Schmalensee's testimony and the expert reports referenced extensively throughout the course of
20 his deposition disclose confidential and non-public financial and business information relating to
21 both Microsoft and Motorola, including as it relates to their confidential licensing arrangements
22 with third parties. Disclosure of this information to third parties and other party employees not
23 covered by the protective order would have the potential to lead to competitive harm.
24 Accordingly, there is good cause to seal Exhibit 11, which should be sealed in its entirety. This
25 document was previously submitted as Exhibit 1 to the August 27, 2012 Declaration of
26 Christopher Wion in Support of Microsoft's Rule 702 Motion to Preclude Testimony by Charles

1 R. Donohoe and Dr. R. Sukumar (Dkt. No. 398), and was ordered sealed by the Court on
2 September 10, 2012 (Dkt. No. 419).

3 Exhibit 12 to the 10/4/12 Wion Declaration is a copy of the November 12, 2010 Non
4 Disclosure Agreement between Motorola and Microsoft, which discloses the terms of the parties'
5 confidential framework regarding settlement negotiations. The document has been designated as
6 "Confidential Business Information, Subject to Protective Order." Motorola has no objection to
7 sealing of Exhibit 12.

8 Exhibit 14 to the 10/4/12 Wion Declaration is a copy of the transcript of the August 21,
9 2012 deposition of Motorola expert Timothy Drabik, which has been designated
10 "CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO THE PROTECTIVE ORDER."
11 During his deposition, Dr. Drabik testified regarding his opening and rebuttal expert reports,
12 which were designated "Contains Confidential Business Information Subject To Protective
13 Order." In his reports and his testimony, Dr. Drabik discussed sensitive and technical aspects of
14 Microsoft's products, general disclosure of which would have the potential to lead to competitive
15 harm. Accordingly, Motorola does not oppose sealing Exhibit 14. Excerpts from this document
16 were previously submitted as Exhibit 5 to the August 27, 2012 Declaration of Christopher Wion in
17 Support of Microsoft's Rule 702 Motion to Preclude Testimony by Charles R. Donohoe and Dr.
18 R. Sukumar (Dkt. No. 398), and was ordered sealed by the Court on September 10, 2012 (Dkt.
19 No. 419).

20 Exhibit 15 to the 10/4/12 Wion Declaration is a copy of the July 30, 2012 corrected
21 Opening Expert Report of Timothy Drabik (original served on July 24, 2012).¹ This report, which
22 Motorola has designated "Contains Confidential Business Information Subject To Protective
23 Order," contains highly confidential information about Microsoft's business practices and
24

25 ¹ Microsoft states (Dkt. No. 448 at 4) that Exhibit 15 was sealed by the Court pursuant to Dkt. No. 419. However,
26 that Order granted Microsoft's 8/27/12 Motion To File Documents Under Seal (Dkt. No. 394), which did not mention
Dr. Drabik's opening report. Microsoft did not submit Dr. Drabik's opening report in support of Microsoft
Corporation's Rule 702 Motion to Preclude Testimony By Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 398).

1 strategies, as well as confidential information about both parties' patented technologies.
2 Throughout his report, Dr. Drabik discussed sensitive and technical aspects of Microsoft's
3 products, general disclosure of which would have the potential to lead to competitive harm.
4 Disclosure of this information to third parties and other party employees not covered by the
5 protective order would have the potential to lead to competitive harm. Accordingly, there is good
6 cause to seal Exhibit 15, which should be sealed in its entirety.

7 Exhibit 16 to the 10/4/12 Wion Declaration is a copy of Motorola's Supplemental
8 Response to Microsoft's Interrogatory No. 16. This response, which Motorola has designated
9 "CONTAINS CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE
10 ORDER – ATTORNEYS' EYES ONLY," contains highly confidential internal Motorola
11 information regarding its evaluation of the legal scope of its patents. The response also
12 incorporated by reference numerous documents, including the opening and rebuttal expert reports
13 of Timothy Drabik, both of which have been designated as "Contains Confidential Business
14 Information Subject To Protective Order." Disclosure of this information to third parties and other
15 party employees not covered by the protective order would have the potential to lead to
16 competitive harm. Accordingly, there is good cause to seal Exhibit 16, which should be sealed in
17 its entirety.

18 **B. Microsoft's Motions *In Limine***

19 Microsoft's Motions *In Limine* include references to and descriptions of confidential
20 information contained in Exhibits 1-12 and 14-16 to the 10/4/12 Wion Declaration. For the
21 reasons stated in Microsoft's Motion 10/4/12 Motion to File Documents Under Seal (Dkt.
22 No. 448), and for the additional reasons stated above, there is good cause to seal those portions of
23 Microsoft's Motions *In Limine* (Dkt. No. 450) that refer to such confidential information.

24 **C. Microsoft's Proposed Findings of Fact and Conclusions of Law**

25 Microsoft's Proposed Findings of Fact and Conclusions of Law (Dkt. No. 454) disclose
26 information that has been designated as confidential under the terms of the Protective Order by

both the parties and third parties not involved in this litigation. Such information includes highly confidential information about licensing practices, finances, proprietary technologies, and business practices. Disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Microsoft's Proposed Findings of Fact and Conclusions of Law should therefore be sealed to the extent that they discuss or refer to such confidential information.

III. CONCLUSION

Defendants do not oppose Microsoft's 10/4/12 Motion to File Documents Under Seal (Dkt. No. 448). Nothing herein is intended as a waiver of Defendants' right to contest Microsoft's designation of material as Confidential Business Information in accordance with the terms of the Protective Order entered on July 21, 2011 (Dkt. No. 72). Defendants expressly reserve the right to do so as the circumstances warrant.

DATED this 10th day of October, 2012.

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***Attorneys for Motorola Solutions, Inc., Motorola
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 10th day of October, 2012.

/s/ Marcia A. Ripley

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